88-1209

No.

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

CHARLES W. and NELLIE P. BAUER,
Petitioners,

vs.

ROBERT H. WALDSCHMIDT as Trustee of the Bankruptcy Estate of Charles W. and Nellie P. Bauer, SOVRAN BANK/CENTRAL SOUTH (formerly known as Commerce Union Bank of Clarksville, Tennessee), KENNETH C. BAINES, and MICHAEL BIGGS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether this Court should grant certiorari to review a decision of the United States Court of Appeals for the Sixth Circuit which affirmed a District Court order substituting the Petitioners' Chapter 7 Trustee as party-plaintiff in an action brought by the Petitioners against Sovran Bank/Central South and two of its employees.

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Supreme Court Rule 17 5,8,9,10

Other Authorities:

4 Collier on Bankruptcy, ¶704.02 (15th Ed. 1982) 11

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INDEX TO APPENDIX

Sovran incorporates by reference the Appendix set forth in the Petition for Writ of Certiorari. References to materials within Petitioners' Appendix shall be made as follows:

"Appendix _____ to Petition for Writ of Certiorari at A-_____."

In addition, Sovran includes the following document as Appendix 1 to its Brief:

Order of the United States Bankruptcy Court for the Middle District of Tennessee entered May 29, 1987 ..... A-1

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

CHARLES W. and NELLIE P. BAUER,
Petitioners,

vs.

ROBERT H. WALDSCHMIDT as Trustee of the Bankruptcy Estate of Charles W. and Nellie P. Bauer, SOVRAN BANK/CENTRAL SOUTH (formerly known as Commerce Union Bank of Clarksville, Tennessee), KENNETH C. BAINES, and MICHAEL BIGGS,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals For the Sixth Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Sovran incorporates by reference the statement of the Petitioners in their Petition for a Writ of Certiorari regarding the opinions of the District Court and the United States Court of Appeals for the Sixth Circuit.

JURISDICTION

Sovran incorporates by reference the statement of the Petitioners in their Petition for a Writ of Certiorari regarding the timely filing of their petition, but asserts that this Court does not have the jurisdiction to consider the petition because the case is not "in the court of appeals" as required by 28 U.S.C. §1254.

I. STATEMENT OF THE CASE

Respondent Sovran Bank/Central South ("Sovran") accepts the Statement of the Case presented by the Petitioners with the following exceptions and clarifications:

1. The Petitioners set forth as fact certain allegations in their Statement of the Case which are not supported by the record. The Petitioners state that, "the former Trustee [Mr. Robert H. Waldschmidt] authorized the Petitioners to proceed on behalf of the estate and to account to him for any judgment proceeds." *See* Petition for Writ of Certiorari at 9, referencing letter dated November 25, 1985. At the time this letter was written, the Petitioners' bankruptcy case had been closed; the Petitioners had received a discharge; and Mr. Waldschmidt had been discharged as Trustee for the Petitioners' bankruptcy estate. Accordingly, Mr. Waldschmidt had no authority to authorize the Petitioners to proceed on behalf of an estate which did not exist. In fact, the letter from Mr. Waldschmidt to the attorney for the Petitioners clearly states that he could "proceed at your own risk." *See* letter from Robert H. Waldschmidt to Michael A. Meyer dated November 25, 1985, Appendix K to Petition for Writ of Certiorari, at A-41.

2. The Petitioners fail to state in their statement of the Case that the Bankruptcy Court approved the proposed settlement between the Trustee and Sovran only after a hearing at which the Petitioners appeared with counsel and presented proof as to

the alleged inadequacy of the settlement. *See* Order entered May 29, 1987 by the United States Bankruptcy Court for the Middle District of Tennessee, Appendix 1. In that order, the Bankruptcy Court found, *inter alia*, that (1) the Petitioners had failed to disclose their cause of action against Sovran to the Trustee; (2) the Petitioners had failed to list the cause of action as an asset on their bankruptcy petition; and (3) that the proposed settlement was reasonable and in the best interests of creditors and the estate. *Id.* The Petitioners appealed the Bankruptcy Court order to the District Court, which presently has the appeal under advisement.

3. This petition for a writ of certiorari involves the issue of whether the District Court erred in substituting the Petitioner's Chapter 7 bankruptcy trustee as party-plaintiff in an action brought by the Petitioners against Sovran, which action is based upon operative facts that occurred prior to the Petitioners' bankruptcy filing. The District Court ordered the substitution based upon Rule 25 of the Federal Rules of Civil Procedure, which provides in relevant part that

> "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party."

Fed. R. Civ. Proc. 25(c). The Court of Appeals held that the order of the District Court allowing the substitution of the Chapter 7 Trustee as party-plaintiff was interlocutory and nonappealable. The Court of Appeals noted that such orders are reviewed only for abuse of discretion. Order Entered by Sixth Circuit Court of Appeals on October 20, 1988, Appendix A to Petition for Writ of Certiorari at A-6, *citing R.J. Enstrom Corp. v. Interceptor Corp.*, 555 F.2d 277, 281 (10th Cir. 1977) and 7C C. Wright, A. Miller & M. Kane, *Federal Practice and*

Procedure, §1962 (2d Ed. 1986). The Court stated that "Even if the order of substitution were immediately appealable, we would be unable to detect so much as hint of any abuse of discretion here." Appendix A to Petition for Writ of Certiorari at A-6.

The Court of Appeals further held that the District Court order did not come with the purview of the collateral order doctrine announced in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), because the decision did not involve an "important" issue. Appendix A to Petition for Writ of Certiorari at A-4. Specifically, the Court of Appeals stated that

> "We are not persuaded that the question is an 'important' one, because . . . the argument that substitution was improper appears to border on the frivolous. Questions that obviously admit of only one answer . . . are not important enough to justify consideration in separate interlocutory appeals."

Id. at A-4. The Petitioners now present the same argument to this Court.

II. SUMMARY OF ARGUMENT AGAINST GRANTING THE WRIT OF CERTIORARI

The issue presented is whether this Court should grant certiorari to review the decision of United States Court of Appeals for the Sixth Circuit which affirmed a District Court order substituting the Petitioners' Chapter 7 Trustee as party-plaintiff in an action brought by the Petitioners against Sovran and two of its employees.

Sovran submits that this Court does not have jurisdiction to decide this case because it was not properly in the Court of Appeals, as required by 28 U.S.C. §1254. The order complained of by Petitioners is not a final order or a reviewable collateral order and therefore the Court of Appeals properly dismissed the appeal for lack of jurisdiction.

Sovran submits further that the Petitioners fail to set forth "special and important" reasons for granting the writ of certiorari as required by Supreme Court Rule 17. The Petitioners do not assert that the decision of the Court of Appeals conflicts with decisions of other courts of appeal. Nor do the Petitioners allege misconduct by either the District Court or the Court of Appeals. Finally, the Petitioners cannot establish that the Court of Appeals decided an "important" question of federal law either not previously addressed by this Court or in conflict with a decision by this Court.

III. ARGUMENT

A. The Decision of the District Court is Not a Final Order and Therefore this Court Does Not Have Jurisdiction to Review the Decision by Certiorari.

The authority of the Supreme Court to review decisions of lower courts by certiorari is established by 28 U.S.C. §1254, which provides, in relevant part, that

> "Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."
>
> * * *

28 U.S.C. §1254. The fundamental requirement of the statute — that cases be "in the court of appeals" — is not satisfied in this case. The Court of Appeals properly dismissed the appeal from the District Court for lack of jurisdiction because it held the decision of the District Court was neither a final order nor an appealable collateral order. The Petitioners do not argue that the order of the District Court, substituting Petitioner's Chapter 7 bankruptcy trustee as party-plaintiff in an action brought by Petitioners against Sovran and two of its employees, is a final order. Instead, the Petitioners contend that the order is a collateral order within the meaning of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 93 L.Ed. 1528, 69 S.Ct. 1221 (1949) and *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 66 L.Ed. 2d 571, 101 S.Ct. 669 (1981).

There appears to be no conflict within the Courts of Appeal on the issue that a substitution order is interlocutory and non-appealable, and there is no authority for the proposition that such an order is a collateral order within the meaning of *Cohen*. *See, e.g., Virginia Land Co. v. Miami Shipbuilding Corp.*, 201

F.2d 506, 508 (5th Cir. 1953) (order denying substitution of parties, which rested in the discretion of the District Court, was not appealable); *Liddell v. Board of Education of City of St. Louis*, 693 F.2d 721, 723, n.6 (8th Cir. 1981) (portion of district court order which added school district as defendant in desegregation suit not appealable); *Metalock Repair Service v. Harman*, 216 F.2d 611, 611-612 (6th Cir. 1954) (order directing joinder of aditional parties defendant was interlocutory and non-appealable); *Prop-Jets, Inc. v. Chandler*, 575 F.2d 1322, 1325 (10th Cir. 1978) (order joining second corporation as a party-defendant was interlocutory and non-appealable); *In re Sylvania Electric Products, Inc.*, 220 F.2d 423, 425 (1st Cir. 1955) (court denied petitioner's motion for leave to file petition for writ of mandamus directing district court to vacate unappealable interlocutory order allowing substitution of party-plaintiff). In *Sylvania Electric Products*, the Court stated that Congress, in following a policy against allowing "piecemeal appellate review" has in general provided for judicial review only of final decisions. 220 F.2d at 424. The Court noted that this policy was adhered to even in cases in which appellate review of an interlocutory decision might prevent a lengthy trial. *Id.* at 425.

The Petitioners assert that the substitution order has the effect of deciding the case on the merits; however, Petitioners acknowledge that they can object and be heard with regard to any settlement of the action proposed by the Trustee. Indeed, the present case is rife with the sort of "piecemeal review" of which the court in *Sylvania Electric Products* warned: the Petitioners have appealed the substitution order from the District Court to the Court of Appeals, and now attempt appeal to this Court, while at the same time challenging on appeal to the District Court the decision of the Bankruptcy Court approving the proposed compromise and settlement of the action. As the Court of Appeals specifically noted, the Petitioners can appeal the Bankruptcy Court order to the Court of Appeals if unsatisfied with the result in District Court. *See* Appendix A to Petition for Writ of Certiorari at A-5. At that time, the Court

of Appeals can decide the correctness of the final judgment and all interlocutory orders in this case. Thus, the Petitioners cannot establish an important element of the *Cohen* test: that if the present order were not appealable, then the order would effectively be beyond review.

B. The Petitioners Have Failed to Set Forth Special and Important Reasons for the Granting of a Writ of Certiorari as Required by Supreme Court Rule 17.

Rule 17 of the Supreme Court Rules sets forth several factors to be considered by the Court in determining whether to grant certiorari in a particular case. These considerations include (1) whether a federal court of appeals has rendered a decision in conflict with another federal court of appeals on the same question; (2) whether a federal court of appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision; and (3) whether a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by the Supreme Court, or has decided a federal question in a way in conflict with applicable decisions of the Supreme Court. Supreme Court Rule 17. The remaining factors outlined in Rule 17 are concerned with conflicts between state law and federal law, or state court resolutions of federal questions, and are not applicable of this case.

The Petitioners fail to state any special or important reason for granting the writ of certiorari in this case. First, the decision of the Sixth Circuit Court of Appeals does not conflict with the decision of any other federal court of appeals on the same question. Indeed, the Petitioners do not even allege such a conflict. The Petitioners assert only that the Sixth Circuit's decision conflicts with the decision of a Bankruptcy Court in the Second Circuit, *In re McCorhill Publishing, Inc.*, 89 B.R. 393 (Bankr. S.D. N.Y. 1988). Even if true, a conflict between a Court of Appeals

and a bankruptcy court does not satisfy the requirements of Rule 17. This is particularly significant in light of this Court's previous statement that

> "[I]t is very important that we be consistent in not granting the writ of certiorari except in cases the settlement of which is of importance to the public as distinguished from that of the parties, *and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.*"

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 392-393, 43 S.Ct. 422, 423-424, 67 L.Ed. 712 (1923) (emphasis added).

Sovran asserts not only that Petitioners' reliance on *McCorhill,* as evidence of a split among circuits, is misplaced, but also that *McCorhill* does not conflict with the decision of the Sixth Circuit in the present case. In *McCorhill,* the Bankruptcy Court held that a Chapter 11 debtor had standing to object to a claim filed by a creditor, and to assert counterclaims against that creditor, even though a trustee had been appointed in the case. *Id.* at 396. The Court relied largely on the fact that the Trustee *supported* the Debtor's standing to pursue a counterclaim against its creditor. *Id.* In the present case, unlike *McCorhill,* the Trustee does not support participation by the Petitioners in the control of the lawsuit against Sovran. While Sovran cannot speak for the Trustee, this is apparently based on the fact that the Trustee does not care to trade a certain return to the creditors of the Petitioners' estate (based upon the settlement approved by the Bankruptcy Court) for a speculative recovery on a difficult and costly lawsuit. Thus, unlike *McCorhill,* the creditors in this case bear the risks of going forward — a risk the Trustee, acting on behalf of the creditors, was not prepared to take.

Second, the Petitioners do not assert that the Sixth Circuit departed from or sanctioned a departure from the usual course

of judicial proceedings. The District Court certainly acted within its authority in substituting the Trustee as party-plaintiff. Such substitutions are specifically contemplated by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. Proc. 25. Neither the District Court nor the Sixth Circuit have acted in such a way as to require the supervision of this Court.

Finally, the Sixth Circuit did not decide an "important" question of federal law either not previously addressed by this Court or in conflict with a decision by this Court. The Sixth Circuit decided that the decision to substitute the Trustee as party-plaintiff was not a final order and therefore dismissed the appeal for lack of jurisdiction. The Sixth Circuit further specifically held that the decision was not a collateral order under the *Cohen* doctrine because it did not implicate an "important" issue of law. In addition, the Court held that the decision whether to substitute a party-plaintiff lies within the discretion of the trial court, and that there was "not a hint of abuse of discretion" in this case. None of these holdings from which the Petitioners seek to appeal are important issues of law within the meaning of Rule 17. Contrary to the Petitioners' assertions, these decisions do not pertain to the right of trial by jury or the power of non-Article III Courts to adjudicate certain controversies. The District Court simply abided by the Rules of Civil procedure and the clear mandate of the Bankruptcy Code by substituting as party-plaintiff the true owner of the cause of action — the Chapter 7 Trustee to which ownership of the action passed at the time of the Petitioners' bankruptcy filing.

C. The Petitioners' Remaining Arguments Regarding the Right to Trial by Jury and Due Process are also Without Merit.

The Petitioners also assert that the trial court and the Court of Appeals erred by denying the Petitioners their right to trial by jury, and further violated their rights to due process. Not only are these arguments without merit, they have no bearing on the

issue of whether this Court should grant certiorari to review an interlocutory order of the District Court. In this case, the District Court was guided by the United States Bankruptcy Code, which provides that "all legal and equitable interests" of debtors in property, including causes of action, become property of the estate. *See* 11 U.S.C. §541(a) and supporting Legislative History. The Bankruptcy Code further provides that the Trustee is the representative of the estate, with the capacity to sue and be sued. 11 U.S.C. §323(b) and Bankruptcy Rule 6009. The right to pursue causes of action formerly owned by the Debtor vests in the Trustee for the benefit of the estate. *Sierra Switchboard Co. v. Westinghouse Electric Corp.*, 789 F.2d 705, 709 (9th Cir. 1986); *Tignor v. Parkinson*, 729 F.2d 977, 981 (4th Cir. 1984); *Jefferson v. Mississippi Gulf Coast YMCA*, 73 Bakr. 179, 181-82 (S.D. Miss. 1986); *see also* 4 Collier on Bankruptcy, ¶704.02 (15th Ed. 1982). In considering the Trustee's role in controlling all property of the estate, including causes of action, it is clear that the District Court did not abuse its discretion in substituting the Trustee as party-plaintiff in the instant lawsuit.

The Petitioners' argument that the Court of Appeals decision has deprived them of the right to a jury trial and to due process under the law is misplaced. First, for the reasons stated above, the Petitioners do not own or control the cause of action against Sovran and therefore have no right to demand a jury trial. Second, none of the cases cited by the Petitioners held that a debtor in a Chapter 7 case has the right to demand a jury trial on *any* sort of claim, personal injury or otherwise, which has passed to the Trustee. Third, the Petitioners take the illogical position that a Trustee cannot even *settle* a personal injury claim in Bankruptcy Court.[1] However, the mere fact that personal in-

[1] The Petitioners ignore the fact that the Bankruptcy Court approved the compromise and settlement but directed the Trustee "to take all steps necessary to fully conclude this proceeding and *to finally settle in the District Court* the cause of action held by the estate against [the Bank]". Bankruptcy Court order entered May 29, 1987. Exhibit 1 at A-4. (emphasis added).

jury claims should be *tried* in the District Court does not deprive the Bankruptcy Court of the authority to approve a compromise and settlement of the claim. Finally, the Petitioners have not been deprived of their right to due process by the Trustee's election to settle the claim against Sovran: the Bankruptcy Code and the Bankruptcy Rules provide them with the opportunity to appear and object to any settlement proposed by the Trustee. In this case, the Petitioners have objected to the settlement, and have presented evidence in opposition, and the Bankruptcy Court has approved the settlement over the Petitioners' objections.

In summary, the Petitioners complain that the District Court failed to abide by the "plain meaning" of certain statutes, and then proceed to ignore the plain meaning of others. More importantly, the Petitioners have failed to satisfactorily explain why this Court should grant certiorari to review an interlocutory decision of the District Court.

IV. CONCLUSION

For the reasons set out above, Sovran requests this Court to deny the Petition for a Writ of Certiorari. Sovran also requests such other relief as is just and proper.

Respectfully submitted,

DEARBORN & EWING

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By: L. Webb Campbell, II, Esq.

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APPENDIX

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

Case No. 385-00421
Chapter 7 Proceedings
Judge George C. Paine, II

In Re:
Charles W. Bauer, a/k/a Charles W. Bauer, Jr.,;
and Nellie P. Bauer, a/k/a Nellie Patrick Bauer,
Debtors.

ORDER

(May 29, 1987)

This case came before the Court on the motion of the Debtors to set aside the Order entered by this Court on February 19, 1987, denying confirmation of the Debtors' Chapter 13 Plan and converting the case to Chapter 7, and the motion by Robert H. Waldschmidt, Trustee, to dispose of the Debtors' objection to the proposed compromise and settlement of the estate's cause of action against Commerce Union Bank. Also before the Court was the Debtors' renewed motion for equitable relief from the conditions imposed upon conversion to Chapter 13 and for an extension of the sixty (60) day deadline for confirmation of their Chapter 13 Plan. This motion was previously denied by this Court. Upon consideration of these motions, the entire record before this Court, the evidence presented by the Debtors, the Trustee, and Commerce Union Bank of Clarksville, and the arguments of counsel, the Court finds as follows:

1. The Debtors filed for relief under Chapter 7 of the Bankruptcy Code on February 25, 1985. They received a discharge of all debts on June 4, 1985. Their case was closed on June 21, 1985.

2. Subsequent to receiving a discharge and the closing of their bankruptcy case, the Debtors brought an action in the United States District Court for the Middle District of Tennessee against Commerce Union Bank of Clarksville for conduct which allegedly occurred prior to the date of their Chapter 7 petition. The Debtors sought Five Million and 00/100ths Dollars ($5,000,000.00) in damages in this action. However, the Debtors had failed to disclose this cause of action as an asset on their bankruptcy petition or the underlying facts which occurred prior to the filing of their petition. The Debtors also failed to inform the Chapter 7 Trustee of this potential cause of action at any time during the pendency of their bankruptcy case. Based upon their failure to disclose this asset, the District Court stayed the District Court proceedings pending reopening of the Debtors' bankruptcy case.

3. The Debtors then moved this Court to reopen their bankruptcy case to allow the administration of this asset. The former Trustee, Robert H. Waldschmidt, joined in this motion and the case was reopened over the objections of Commerce Union Bank of Clarksville. Robert H. Waldschmidt was reappointed as Trustee.

4. Subsequent to the reopening of the Debtors bankruptcy case, the Trustee moved this Court to allow the compromise and settlement of the estate's cause of action against Commerce Union Bank of Clarksville. By the terms of the proposed settlement, the creditors of the Debtors' Chapter 7 bankruptcy estate would receive a dividend of approximately Sixty-five cents (65¢) on the dollar. The Debtors objected to the proposed settlement and moved to convert their case to a case under Chapter 13 of the Bankruptcy Code. After a hearing held November 4, 1987, at which the Court heard evidence on both issues, the Court entered an order allowing the Debtors to convert their case to Chapter 13. This order provided, *inter alia,* that failure of the Debtors to confirm a Chapter 13 Plan by no later than February 3, 1987 (Sixty (60) days from the date of conversion), would result in the Debtors' case being reconverted to Chapter 7.

6. The Debtors moved this Court for equitable relief from the Sixty (60) day deadline for confirmation on January 22, 1987. This motion was denied by this Court on January 23, 1987.

7. The Debtors proposed a Chapter 13 Plan and a meeting of creditors was held on January 27, 1987. Commerce Union Bank of Clarksville objected to confirmation of the plan, and a confirmation hearing was held January 27, 1987. Based upon the evidence presented at the hearing, the arguments of counsel, and the entire record in the case, the Court denied confirmation and ordered the case to be reconverted to Chapter 7. After the Court announced its decision, but prior to the entry of the Order, the Debtors renewed their motion for equitable relief from the Sixty (60) day deadline imposed by this Court for confirmation of a Chapter 13 Plan. Subsequent to the entry of the Order, the Debtors moved this Court to set aside the Order, and the Trustee moved the Court to dispose of objections to the proposed compromise and settlement.

8. The Court finds that there is no basis for granting equitable relief from the Sixty (60) day deadline to the Debtors, nor is there any reason to set aside the Order entered February 19, 1987. The Court specifically finds that the conditions placed upon the Debtors upon conversion of their case to Chapter 13 were appropriate under the circumstances of this case.

9. The Court also finds that the proposed compromise and settlement is reasonable and is in the best interest of creditors and the estate and should be approved.

Based upon the foregoing findings of fact and conclusions of law, it is hereby

ORDERED that the Debtors' motions to set aside the order entered by this Court on February 19, 1987, is DENIED; It is further

ORDERED that the Debtors' renewed motion for equitable relief is also DENIED; It is further

ORDERED that the Trustee's motion to dispose of the Debtors' objection to the proposed compromise and settlement is GRANTED; It is further

ORDERED that the Trustee is directed and authorized to take all steps necessary to fully conclude this proceeding and to finally settle in the District Court the cause of action held by the estate against Commerce Union Bank.

Entered this _____ day of May, 1987.

/s/ Judge George C. Paine, II

APPROVED FOR ENTRY:

DEARBORN & EWING

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/s/ Gregory D. Smith
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COSNER & WALDSCHMIDT

/s/ Robert H. Waldschmidt
Chapter 7 Trustee
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this document has been delivered first class, postage prepaid to Mr. Robert H. Waldschmidt, Chapter 7 Trustee, 20th Floor, First American Center, Nashville, TN 37238; Ms. Linda W. Knight of Gullett, Sanford, Robinson & Martin, Counsel for the Debtors, P.O. Box 2757, Nashville, TN 37219-0757; Mr. David Burn and Mr. Michael Meyer of Burn & Meyer, 172 Second Avenue North, Suite 202, Nashville, TN 37201; and Mr. Henry E. Hildebrand, III, Chapter 13 Trustee, St. Cloud Corner, 500 Church Street, Nashville, TN 37219, this 26th day of May, 1987.

Gregory D. Smith